

REMARKS

Claims 1, 2, 5, 7, 8, 10-27, 32, 34, 36-40 and 43-46 are now pending. Claims 5 and 8 are amended; claims 41 and 42 are canceled; and claims 43-46 are added herein.

Claims 5, 7, 8, 10-26, 32, 34 and 36-42 are rejected under 35 U.S.C. §112, first paragraph, for allegedly lacking enablement. In addition, claims 5, 7, 8, 10-27, 32, 34 and 36-42 are rejected under 35 U.S.C. §112, first paragraph, for allegedly lacking written description. Applicants respectfully traverse these rejections for the reasons set forth in the Appeal Brief filed November 20, 2003, which is hereby incorporated herein.

With regard to claim 10, it is noted that this claim is directed to a primer according to claim 8, wherein the primer "consists essentially of a nucleotide sequence selected from the group consisting of SEQ ID NO:8, SEQ ID NO:9, SEQ ID NO:10 and SEQ ID NO:12." Although this claim depends on claim 8, claim 10 is not directed to a sequence having only 85% homology with SEQ ID NO: 8, SEQ ID NO: 9, SEQ ID NO: 10 and SEQ ID NO: 12. Instead, the claim clearly recites that the primer consists essentially of one of the specifically recited sequences. Therefore, the bases for rejecting these claims for lacking enablement and written description set forth in the Examiner's Answer do not apply to this claim. Thus, it is respectfully submitted that claim 10 is enabled and there is written description for claim 10 in the present application. Therefore, the §112 rejections of this claim should be reconsidered and withdrawn. In addition, it is respectfully submitted that the §112 rejections of all of the other claims rejected on these bases should be reconsidered and withdrawn for the reasons set forth in the Appeal Brief.

Claims 5, 8, 10, 11, 17, 25, 26, 32, 39 and 40 are rejected under 35 U.S.C. §102 over Birkett et al. Applicants respectfully traverse the rejection.

Claims 5 and 8 have each been amended to recite that the probe or primer contains at least 7 nucleotides. Birkett does not teach or suggest a probe or primer containing at least 7

nucleotides that has the other properties recited in claims 5 and 8. Therefore, the rejection over Birkett should be reconsidered and withdrawn.

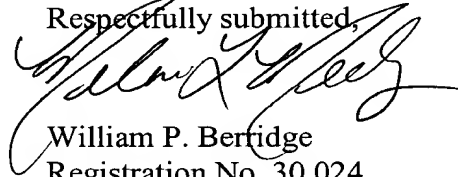
Claims 43-46 have been added to further define the invention. Claims 43 and 44 depend from claims 5 and 8, respectively, and are patentable for at least the same reasons that claims 5 and 8 are patentable.

Claims 45 and 46 are similar to previous claims 5 and 8. However, these claims recite that the nucleic acid of the probe or primer is isolated from nucleic acids that do not have the at least 85% homology with the recited fragment. Since Birkett teaches hexamers in a kit that contains a random set of hexamers, Birkett does not teach or suggest a probe or primer containing a hexamer having at least 85% homology with the recited fragment isolated from hexamers that do not have at least 85% homology with the recited fragment. Therefore, Birkett does not teach or suggest the invention of claims 45 and 46.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of claims 1, 2, 5, 7, 8, 10-27, 32, 34, 36-40 and 43-46 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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